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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,832	01/12/2004	Hayden Bostock	5163BD-1-1	2377

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,832

Applicant(s)

BOSTOCK, HAYDEN

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) 5 and 7 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4,6 and 8-10 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 12 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 10/048078.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: in line 6, the word "member" should be inserted after "support" to be consistent with the claim language.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "the additional projection" lacks prior antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-4,6,8** are rejected under 35 U.S.C. 102(b) as being anticipated by Ivey (908265).

For claim 1, Ivey teaches a safety stirrup comprising: a generally U-shaped mounting member (3,5,A), and a foot support member (9,10,B) for receiving a rider's foot, such that when the rider's foot is in the normal use position, the foot support

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member is supported within the generally U-shaped mounting member by at least one mounting comprising a releaseable connection between the generally U-shaped mounting member and the foot support, wherein vertically upward movement of the rider's foot out of the normal use position causes the at least one mounting to release the foot support member sufficiently that the foot support member can move in the same direction as the rider's foot until the foot support member is fully disconnected from the U-shaped mounting member (page 1, lines 85-98).

For claims 2 & 3, Ivey teaches similar to claim 1 as discussed above with further teaching of at least one projection (8,13) located in a recess (6,4) adjacent to the U-shaped mounting member to allow full disconnection of the mounting member and foot support member.

For claim 4, Ivey teaches wherein the at least one projection is located on the foot support (projection 13 is located on foot support 9,10,B) and are received in one or more recesses in the U-shaped mounting member (recess 4 is located in mounting member 3 to receive projection 13).

For claim 6, Ivey teaches wherein one additional projection (13) is located on one side of the foot support member (9,10), and another additional projection (13) is located on an opposing side of the foot support member (9,10), each additional projection being received in a complementary shaped recess (4,6) in the U-shaped mounting member.

For claim 8, Ivey teaches wherein at least one of the complementary shaped recesses includes an indentation (4,6) in which the additional projection (13,8) resides during normal use, but vertical movement of the rider's foot out of the normal use

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position causes the additional projection to move out of the indentation, releasing the foot support sufficiently that the additional projection can move along a guide and the foot support member can move in the same direction as the rider's foot prior to the foot support being fully disconnected from the U-shaped mounting member.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ivey (as above) in view of Eddleman (1052327).

Ivey lacks a biasing means. Eddleman teaches a safety stirrup in which Eddleman employs a biasing means 25 to resist movement of the projections 26 in their respective recesses 18,34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a biasing means as taught by Eddleman in the safety stirrup of Ivey in order to resist movement of the projections before breaking lose for emergency.

8. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ivey (as above) in view of Martin (5979149).

Ivey lacks non-metallic material. Martin teaches a safety stirrup comprising of a non-metallic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the safety stirrup of Ivey out of a

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non-metallic material as taught by Martin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4,6,8-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6698169. Although the conflicting claims are not identical, they are not patentably distinct from each other because both US6698169 and the present invention claim a safety stirrup including a generally U-shaped mounting member, and a foot support member, such that when the rider's foot is in the normal use position, the foot support member is restrained by one or more mountings or projections, wherein, during normal use, the projections are located in one or more recesses adjacent the ends of the U-shaped mounting member but vertically upward movement of the rider's foot out of the normal use position causes the one or more mountings to release the foot

support member sufficiently that the foot support member can move in the same direction as the rider's foot until the foot support member is fully disconnected from the U-shaped mounting member, the one or more projections moving in their respective recess(es) and rotating in the same direction as the rider's foot prior to the foot support member being fully disconnected from the U-shaped mounting member. In addition, both also claim the projections being received in complementary shaped recesses in the mounting member, a biasing means and a non-metallic material.

Terminal Disclaimer

10. The application/patent being disclaimed has not been identified.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn